

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant : Merwin H. Alferness et al.
Serial No. : 10/667,029
Filed : September 18, 2003
For : METHODS AND APPARATUS FOR ALLOCATING
BANDWIDTH FOR A NETWORK PROCESSOR
Examiner : TANH Q. NGUYEN
Group Art Unit : 2182
Confirmation No. : 9131
Customer No. : 46628

Mail Stop Reply Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

In response to the Examiner's Answer mailed July 21, 2010, this Reply Brief is respectfully submitted.

STATUS OF THE CLAIMS

Claims 1-23 have been rejected and are on appeal.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-7, 11, 12-18, 22, and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,098,123 to Olnowich [hereinafter *Olnowich*]. Claims 8-10 and 19-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Olnowich*.

ARGUMENT

A PRIMA FACIE CASE OF ANTICIPATION UNDER 35 U.S.C. § 102 OF CLAIMS 1-7, 11, 12-18, 22, AND 23 HAS NOT BEEN ESTABLISHED AS THE CLAIMS EXPRESSLY RECITE "A PLURALITY OF DATA TYPES"

Appellants note that page 10 of the Examiner's Answer suggests that Appellants' application does not require a plurality of data types ("hence not requiring a plurality of data types", "hence a plurality data types being of the same type"). In response, Appellants respectfully submit that the claims clearly and expressly recite "a plurality of data types."

A PRIMA FACIE CASE OF ANTICIPATION UNDER 35 U.S.C. § 102 OF CLAIMS 1-7, 11, 12-18, 22, AND 23 HAS NOT BEEN ESTABLISHED AS FAST ETHERNET AND GIGABIT ETHERNET ARE DIFFERENT PROTOCOLS HAVING DIFFERENT PACKET STRUCTURES, THUS BEING A PLURALITY OF DATA TYPES

Appellants note that page 10 of the Examiner's Answer contends that "the specification suggests data at one speed being of one data type, and data at another speed being of another data type." This is in reference to Appellants use of the terms Fast Ethernet and Gigabit Ethernet. In response, Appellants respectfully note that Fast Ethernet and Gigabit Ethernet, while having similar names, are different protocols having different packet structures. Thus, Appellants do not agree with the Answer's apparent characterization that Fast Ethernet and Gigabit Ethernet simply differ in terms of speed. Rather, these two protocols are "a plurality of data types."

A PRIMA FACIE CASE OF ANTICIPATION UNDER 35 U.S.C. § 102 OF CLAIMS 1-7, 11, 12-18, 22, AND 23 HAS NOT BEEN ESTABLISHED AS DATA OUT OF TWO DIFFERENT PORTS HAS NOT BEEN SHOWN TO CORRESPOND TO "A PLURALITY OF DATA TYPES", AS EXPRESSLY RECITED

Appellants respectfully note that the burden is initially on the Examiner to establish a prima facie case of anticipation. Page 13 of the Examiner's Answer contends that "appellants' disclosure does not preclude the plurality of data types being data of the same type being transmitted using different ports..." (emphasis added). In response, Appellants respectfully submit that, in the Examiner's own words "data of the same type" is data of the same type and simply does not correspond to a plurality of data types.

A PRIMA FACIE CASE OF OBVIOUSNESS OF CLAIMS 8-10 AND 19-21 HAS NOT BEEN ESTABLISHED AS NO SECONDARY CITATION IS OFFERED THAT WOULD REMEDY THE ABOVE DEFICIENCY OF THE REJECTION OF THE INDEPENDENT CLAIMS

As discussed in the record, the citations to Olnowich fail to disclose all of the features recited in independent claims 1 and 12, from which claims 8-10 and 19-21 ultimately depend. No secondary citation is offered that would cure this deficiency. Accordingly, Appellants respectfully submit that claims 8-10 and 19-21 are allowable for at least the reasons given in support of independent claims 1 and 12.

CONCLUSION

Appellants do not believe any fees are due for the filing of this Reply Brief. However, if any such fees are required, please charge Deposit Account No. **04-1696** any required fee.

Respectfully Submitted,



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Dated: September 21, 2010
Hawthorne, New York